

UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

In Re:

Marc Ivery

Case No. 09-81647

Chapter 13

Social Security No. xxx-xx-9165

Address: 1914 Spring Creek Drive, Durham, NC 27704-

Debtor

MOTION TO MODIFY PLAN

NOW COMES the Debtor, by and through counsel undersigned, who moves, under authority of 11 U.S.C. § 1329, to modify the Chapter 13 plan in this case, and in support hereof, the Debtor shows unto this Court the following:

1. This case was filed on September 22, 2009, with the Chapter 13 plan being subsequently confirmed on January 5, 2010.
2. The Debtor proposes to modify the Chapter 13 plan in this case in the following respects:

From: \$1,835.00 per month.

To: \$1,835.00 per month through September 2010, followed thereafter by \$161.00 per month, starting in October 2010.
3. To facilitate the proposed modification, the Debtor hereby surrenders any interest he may have in collateral securing the following claims:

Creditor and Claim No.	Collateral
ASC (claim no.1)	Residence
EMC (claim no.4)	Residence

4. The property subject to the liens of ASC and EMC has, upon information and belief, not depreciated from any actions of the Debtors following the filing of this case.
5. The changed circumstances that justify the proposed modification are as follows:
 - a. The Debtors can no longer afford to retain their residence and will be relocating to another state shortly. Their housing expenses, following the surrender of the property

and after their move, are estimated.

6. An Amended Schedule I for the Debtor is attached hereto and is incorporated hereto by reference.
7. An Amended Schedule J for the Debtor is attached hereto and is incorporated by reference.
8. The proposed modification conforms to the standards of confirmation set out in 11 U.S.C. §§ 1322 and 1325. This modification is feasible because of the following changes, as detailed on the attached Chapter 13 Worksheet:
 - a. Surrender of property.
 - b. Change in dividend to unsecured creditors from an estimated 32.820% to 0%.

Appended Application for an Additional Attorney Fee

9. Counsel for the Debtor further applies herein, in accordance with Bankruptcy Rule 2016(b), for approval an attorney fee in the amount of \$250.00 to pay for the reasonable value of the services rendered, and to be rendered, with respect to this motion to modify.

WHEREFORE, the Debtor prays that this Court grant his Motion, and modify the Chapter 13 plan accordingly. In addition, counsel undersigned requests that this Court approve a fee in the amount of \$250.00 to compensate undersigned for the services rendered or to be rendered with respect to this motion, said fee to be paid by the Chapter 13 Trustee as an administrative claim in this case.

Dated: October 4, 2010

LAW OFFICES OF JOHN T. ORCUTT, P.C.

/s Edward C. Boltz

Edward C. Boltz

North Carolina State Bar No.: 23003

6616-203 Six Forks Road

Raleigh, N.C. 27615

(919) 847-9750

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In Re:

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Debtor

CERTIFICATE OF SERVICE

I, Patty Cherigo, certify under penalty of perjury that I am, and at all times hereinafter mentioned was, more than eighteen (18) years of age and that on October 4, 2010, I served copies of the foregoing **MOTION TO MODIFY PLAN** electronically, or when unavailable, by regular first-class U.S. mail, addressed to the following parties:

Richard M. Hutson, II
Chapter 13 Trustee
Michael West
U.S. Bankruptcy Administrator

Marc Ivery
1914 Spring Creek Drive,
Durham, NC 27704-

All creditors listed on the attached Mailing Matrix at the addresses listed thereon.

/s Patty Cherigo
Patty Cherigo

CH. 13 PLAN - DEBTS SHEET

(MIDDLE DISTRICT - STEP PLAN)

Date: 8/9/10

Lastname-SS#: Ivery-9165 MTM

RETAIN COLLATERAL & PAY DIRECT OUTSIDE PLAN

Retain:	Creditor Name	Sch D #	Description of Collateral

SURRENDER COLLATERAL

Creditor Name	Description of Collateral
America Sevicng	Home
EMC Mortgage	Home

ARREARAGE CLAIMS ON RETAINED COLLATERAL

Retain:	Creditor Name	Sch D #	Arrearage Amount

REJECTED EXECUTORY CONTRACTS/LEASES

Creditor Name	Description of Collateral

LTD - DOT on PRINCIPAL RESIDENCE / OTHER REAL PROPERTY

Retain:	Creditor Name	Sch D #	Mortgage Payment	Int. Rate	Adequate Protection	Minimum Equal Payment	Description of Collateral
				n/a	n/a		
				n/a	n/a		
				n/a	n/a		
				n/a	n/a		

STD - SECURED DEBTS (Retain Collateral & Pay FMV Of Collateral)

Retain:	Creditor Name	Sch D #	FMV	Int. Rate	Adequate Protection	Minimum Equal Payment	Description of Collateral
				7.00			
				7.00			
				7.00			
				7.00			

STD - SECURED DEBTS & 910 CLAIMS (Pay 100%)

Retain:	Creditor Name	Sch D #	Payoff Amount	Int. Rate	Adequate Protection	Minimum Equal Payment	Description of Collateral
	CFCU		\$4,379	5.25	\$44	\$132	Ford Escape
				7.00			
				7.00			
				7.00			

ATTORNEY FEES (Unpaid Part)		Amount
Law Offices of John T. Orcutt, P.C.		\$250
SECURED TAXES		Secured Amount
IRS Tax Liens		
Real Property Taxes on Retained Realty		
UNSECURED PRIORITY DEBTS		Amount
IRS Taxes		
State Taxes		
Personal Property Taxes		
Alimony or Child Support Arrearage		
COSIGN PROTECT (Pay 100%)	Int. %	Payoff Amount
All 'Co-Sign Protect Debts (See***)		
GENERAL NON PRIORITY UNSECURED		Amount to Pay*
DMI = None(\$0)		

PROPOSED CHAPTER 13 PLAN

\$ 161 /month for 33 months, then

\$ N/A /month for N/A months.**

Definitions

Sch D # = The number of the secured debt as listed on Schedule D.

Adequate Protection = Required monthly 'Adequate Protection' payment.

* = Minimum of DMI x ACP, minus all co-sign protect debt.

** = Plan duration is subject to "Duration of Chapter 13 Plan" provision.

*** Co-sign protect on all debts so designated on filed schedules D, E and F

Final_MD_Step (rev. 11/6/07) © Copyright by John T. Orcutt (Page 4 of 4)

Other Miscellaneous Provisions

In re **Marc Elliot Ivery**Case No. **09-81647**

Debtor(s)

SCHEDULE I - CURRENT INCOME OF INDIVIDUAL DEBTOR(S) - AMENDED

The column labeled "Spouse" must be completed in all cases filed by joint debtors and by every married debtor, whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed. Do not state the name of any minor child. The average monthly income calculated on this form may differ from the current monthly income calculated on Form 22A, 22B, or 22C.

Debtor's Marital Status:	DEPENDENTS OF DEBTOR AND SPOUSE	
Married	RELATIONSHIP(S): Daughter	AGE(S): 4
Employment:	DEBTOR	SPOUSE
Occupation	Correctional Officer	Counselor
Name of Employer	Federal Bureau Of Prisons	CPI
How long employed	12 Years	4 Years
Address of Employer	Low Security Correctional Inst. P.O. Box 999 / Old Hwy 75 Butner, NC 27509	3522 Haworth Drive STE 101 Raleigh, NC 27609

INCOME: (Estimate of average or projected monthly income at time case filed)

1. Monthly gross wages, salary, and commissions (Prorate if not paid monthly)
2. Estimate monthly overtime

3. SUBTOTAL

4. LESS PAYROLL DEDUCTIONS

- a. Payroll taxes and social security
b. Insurance
c. Union dues
d. Other (Specify) See Detailed Income Attachment

5. SUBTOTAL OF PAYROLL DEDUCTIONS

6. TOTAL NET MONTHLY TAKE HOME PAY

7. Regular income from operation of business or profession or farm (Attach detailed statement)

8. Income from real property

9. Interest and dividends

10. Alimony, maintenance or support payments payable to the debtor for the debtor's use or that of dependents listed above

11. Social security or government assistance
(Specify): _____

12. Pension or retirement income

13. Other monthly income

(Specify): Va Disability

14. SUBTOTAL OF LINES 7 THROUGH 13

15. AVERAGE MONTHLY INCOME (Add amounts shown on lines 6 and 14)

16. COMBINED AVERAGE MONTHLY INCOME: (Combine column totals from line 15)

17. Describe any increase or decrease in income reasonably anticipated to occur within the year following the filing of this document:

-NONE-

(Report also on Summary of Schedules and, if applicable, on
Statistical Summary of Certain Liabilities and Related Data)

In re Marc Elliot Ivery

Debtor(s)

Case No. 09-81647

SCHEDULE I - CURRENT INCOME OF INDIVIDUAL DEBTOR(S) - AMENDED
Detailed Income Attachment

Other Payroll Deductions:

<u>401K Loan Repayment</u>	\$ <u>69.20</u>	\$ <u>0.00</u>
<u>401 K Contribution</u>	\$ <u>54.94</u>	\$ <u>0.00</u>
<u>Disability Insurance</u>	\$ <u>0.00</u>	\$ <u>66.00</u>
<u>Health Spending Account</u>	\$ <u>0.00</u>	\$ <u>416.66</u>
<u>Total Other Payroll Deductions</u>	\$ <u>124.14</u>	\$ <u>482.66</u>

In re Marc Elliot Ivery

Debtor(s)

Case No. 09-81647

SCHEDULE J - CURRENT EXPENDITURES OF INDIVIDUAL DEBTOR(S) - AMENDED

Complete this schedule by estimating the average or projected monthly expenses of the debtor and the debtor's family at time case filed. Prorate any payments made bi-weekly, quarterly, semi-annually, or annually to show monthly rate. The average monthly expenses calculated on this form may differ from the deductions from income allowed on Form 22A or 22C.

☐ Check this box if a joint petition is filed and debtor's spouse maintains a separate household. Complete a separate schedule of expenditures labeled "Spouse."

1. Rent or home mortgage payment (include lot rented for mobile home)		\$ <u>1,000.00</u>
a. Are real estate taxes included?	Yes <u>X</u> No <u> </u>	
b. Is property insurance included?	Yes <u>X</u> No <u> </u>	
2. Utilities:		
a. Electricity and heating fuel		\$ <u>250.00</u>
b. Water and sewer		\$ <u>116.00</u>
c. Telephone		\$ <u>45.00</u>
d. Other <u>See Detailed Expense Attachment</u>		\$ <u>333.00</u>
3. Home maintenance (repairs and upkeep)		\$ <u>0.00</u>
4. Food		\$ <u>350.00</u>
5. Clothing		\$ <u>0.00</u>
6. Laundry and dry cleaning		\$ <u>40.00</u>
7. Medical and dental expenses		\$ <u>120.00</u>
8. Transportation (not including car payments)		\$ <u>600.00</u>
9. Recreation, clubs and entertainment, newspapers, magazines, etc.		\$ <u>0.00</u>
10. Charitable contributions		\$ <u>0.00</u>
11. Insurance (not deducted from wages or included in home mortgage payments)		
a. Homeowner's or renter's		\$ <u>0.00</u>
b. Life		\$ <u>60.00</u>
c. Health		\$ <u>0.00</u>
d. Auto		\$ <u>150.00</u>
e. Other <u> </u>		\$ <u>0.00</u>
12. Taxes (not deducted from wages or included in home mortgage payments)		
(Specify) <u>Personal Property Taxes</u>		\$ <u>125.00</u>
13. Installment payments: (In chapter 11, 12, and 13 cases, do not list payments to be included in the plan)		
a. Auto		\$ <u>364.00</u>
b. Other <u> </u>		\$ <u>0.00</u>
c. Other <u> </u>		\$ <u>0.00</u>
14. Alimony, maintenance, and support paid to others		\$ <u>0.00</u>
15. Payments for support of additional dependents not living at your home		\$ <u>0.00</u>
16. Regular expenses from operation of business, profession, or farm (attach detailed statement)		\$ <u>0.00</u>
17. Other <u>See Detailed Expense Attachment</u>		\$ <u>934.05</u>
18. AVERAGE MONTHLY EXPENSES (Total lines 1-17. Report also on Summary of Schedules and, if applicable, on the Statistical Summary of Certain Liabilities and Related Data.)		\$ <u>4,487.05</u>
19. Describe any increase or decrease in expenditures reasonably anticipated to occur within the year following the filing of this document:		
<u>-NONE-</u>		
20. STATEMENT OF MONTHLY NET INCOME		
a. Average monthly income from Line 15 of Schedule I		\$ <u>5,435.05</u>
b. Average monthly expenses from Line 18 above		\$ <u>5,435.05</u>
c. Monthly net income (a. minus b.)		\$ <u>0.00</u>

(Spouse's Schedule)

- | | | | |
|--|---|----|--------|
| 1. Rent or home mortgage payment (include lot rented for mobile home) | | \$ | 0.00 |
| a. Are real estate taxes included? | Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> | | |
| b. Is property insurance included? | Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> | | |
| 2. Utilities: | | \$ | 0.00 |
| a. Electricity and heating fuel | | \$ | 0.00 |
| b. Water and sewer | | \$ | 0.00 |
| c. Telephone | | \$ | 0.00 |
| d. Other _____ | | \$ | 0.00 |
| 3. Home maintenance (repairs and upkeep) | | \$ | 0.00 |
| 4. Food | | \$ | 0.00 |
| 5. Clothing | | \$ | 0.00 |
| 6. Laundry and dry cleaning | | \$ | 0.00 |
| 7. Medical and dental expenses | | \$ | 0.00 |
| 8. Transportation (not including car payments) | | \$ | 0.00 |
| 9. Recreation, clubs and entertainment, newspapers, magazines, etc. | | \$ | 0.00 |
| 10. Charitable contributions | | \$ | 0.00 |
| 11. Insurance (not deducted from wages or included in home mortgage payments) | | | |
| a. Homeowner's or renter's | | \$ | 0.00 |
| b. Life | | \$ | 0.00 |
| c. Health | | \$ | 0.00 |
| d. Auto | | \$ | 0.00 |
| e. Other _____ | | \$ | 0.00 |
| 12. Taxes (not deducted from wages or included in home mortgage payments) | | | |
| (Specify) _____ | | \$ | 0.00 |
| 13. Installment payments: (In chapter 12 and 13 cases, do not list payments to be included in the plan.) | | | |
| a. Auto | | \$ | 0.00 |
| b. Other See Spouse Detailed Expense Attachment | | \$ | 948.00 |
| 14. Alimony, maintenance, and support paid to others | | \$ | 0.00 |
| 15. Payments for support of additional dependents not living at your home | | \$ | 0.00 |
| 16. Regular expenses from operation of business, profession, or farm (attach detailed statement) | | \$ | 0.00 |
| 17. Other _____ | | \$ | 0.00 |
| Other _____ | | \$ | 0.00 |
| 18. AVERAGE MONTHLY EXPENSES (Total lines 1-17. Report also on Summary of Schedules and, if applicable, on the Statistical Summary of Certain Liabilities and Related Data.) | | \$ | 948.00 |
| 19. Describe any increase or decrease in expenditures anticipated to occur within the year following the filing of this document: | | | |

SCHEDULE J - CURRENT EXPENDITURES OF INDIVIDUAL DEBTOR(S) - AMENDED
Detailed Expense Attachment

Other Utility Expenditures:

<u>Cablevision/Internet/ Home Phone</u>	\$	<u>176.00</u>
<u>Cellular Phone</u>	\$	<u>157.00</u>
<u>Total Other Utility Expenditures</u>	\$	<u>333.00</u>

Other Expenditures:

<u>Child Care</u>	\$	<u>500.00</u>
<u>Personal Care</u>	\$	<u>23.05</u>
<u>Monthly Chapter 13 Payment</u>	\$	<u>161.00</u>
<u>Cheerleading</u>	\$	<u>50.00</u>
<u>Educational Expenses</u>	\$	<u>200.00</u>
<u>Total Other Expenditures</u>	\$	<u>934.05</u>

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SCHEDULE J - CURRENT EXPENDITURES OF INDIVIDUAL DEBTOR(S) - AMENDED
Spouse Detailed Expense Attachment

Other Installment Payments:

<u>Student Loan</u>	\$	<u>325.00</u>
<u>Credit Card Payments</u>	\$	<u>223.00</u>
<u>Debt Management Payment</u>	\$	<u>400.00</u>
<u>Total Other Installment Payments</u>	\$	<u>948.00</u>